

Senate File 2170 - Introduced

SENATE FILE _____
BY HOGG

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to energy efficiency in schools, by authorizing
2 integrated project delivery contracts for energy conservation
3 measures or construction projects undertaken by a school
4 corporation, providing for energy efficiency contracting
5 pursuant to such contracts under specified circumstances,
6 identifying and authorizing revenue sources for the purpose of
7 providing designated contract guarantees, modifying provisions
8 applicable to school districts receiving distributions from
9 the energy loan fund, and providing an effective date.
10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
11 TLSB 6380XS 82
12 rn/rj/5

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1 1 Section 1. NEW SECTION. 293.1 STATE POLICY.
1 2 The general assembly finds that the creation of high
1 3 performance school buildings in this state will lead to energy
1 4 efficiency and improved student performance. It is the policy
1 5 of the state to encourage school corporations to invest in
1 6 facility upgrades and energy conservation measures that reduce
1 7 energy consumption, produce operational cost savings, or
1 8 improve the quality of indoor air, or when economically
1 9 feasible, to build, operate, maintain, or renovate public
1 10 facilities in a manner which will minimize operational costs
1 11 and maximize energy or utility cost savings or efficiencies.
1 12 Sec. 2. NEW SECTION. 293.2 DEFINITIONS.
1 13 As used in this chapter, unless the context otherwise
1 14 requires:
1 15 1. "Certified measurement and verification professional
1 16 program" means a program sponsored by the association of
1 17 energy engineers, in cooperation with the efficiency valuation
1 18 organization, to recognize qualified professionals in the
1 19 energy efficiency industry and raise the overall professional
1 20 standards within the measurement and verification field.
1 21 2. "Energy conservation measure" means an employee
1 22 training program, facility alteration, or equipment to be used
1 23 in construction, including an addition to an existing
1 24 facility, that reduces energy consumption and operational
1 25 costs, and includes but is not limited to any of the
1 26 following:
1 27 a. Insulation of the facility structure or systems within
1 28 the facility.
1 29 b. Storm windows or doors, caulking or weather stripping,
1 30 multiple glazed windows or doors, heat absorbing or heat
1 31 reflective glazed and coated window or door systems,
1 32 additional glazing, reductions in glass area, or other window
1 33 and door system modifications that reduce energy consumption.
1 34 c. Automated energy control systems.
1 35 d. Heating, ventilating, or air conditioning system
2 1 modifications or replacements.
2 2 e. Replacement or modification of lighting fixtures to
2 3 increase the energy efficiency of the lighting system which,
2 4 at a minimum, shall conform to the applicable state or local
2 5 building code.
2 6 f. Energy recovery systems.
2 7 g. Renewable energy systems, including but not limited to
2 8 solar, biomass, and wind energy systems.
2 9 h. Devices that reduce or monitor water consumption or
2 10 sewer charges.
2 11 i. Any verifiable and clearly disclosed measure not
2 12 otherwise defined that produces energy consumption or
2 13 operational cost savings or efficiencies.

2 14 3. "Energy efficiency contract" means an integrated
2 15 project delivery contract as defined in section 297A.1
2 16 recommending and implementing one or more energy conservation
2 17 measures, providing for verification of annual energy cost
2 18 savings, and guaranteeing of such savings by the qualified
2 19 provider as verified by a third party who is not employed by
2 20 the qualified provider, utilizing the international
2 21 performance measurement and verification protocol.

2 22 4. "High performance school building" means a school
2 23 building that integrates day lighting, indoor air quality, or
2 24 energy efficiency to produce energy or utility cost savings or
2 25 efficiencies, protect natural resources, and provide a quality
2 26 learning environment.

2 27 5. "International performance measurement and verification
2 28 protocol" means a series of volumes produced by the nonprofit
2 29 efficiency valuation organization providing an overview of
2 30 current best practice techniques available for verifying
2 31 results of energy efficiency, water efficiency, and renewable
2 32 energy projects in commercial and industrial facilities.

2 33 6. "Operational cost savings" means operating expenses
2 34 eliminated and future capital replacement expenditures avoided
2 35 as a result of new equipment installation or services
3 1 performed by the qualified provider.

3 2 7. "Qualified provider" means a person or business that
3 3 has been accredited by the United States department of
3 4 energy's federal energy management program or qualified by the
3 5 department of natural resources. The department shall
3 6 establish a qualifications process and criteria by rule.

3 7 Sec. 3. NEW SECTION. 293.3 REQUESTS FOR PROPOSALS AND
3 8 EVALUATION.

3 9 1. A school corporation under chapter 260C, 273, or 279
3 10 may enter into an energy efficiency contract for the purpose
3 11 of achieving energy and operational cost savings through the
3 12 implementation of energy conservation measures.

3 13 2. Prior to entering into an energy efficiency contract, a
3 14 school corporation shall issue a request for proposals. A
3 15 request for proposals shall be advertised for public bidding
3 16 and let publicly pursuant to section 26.3, subsection 1, with
3 17 the exception that notice provisions may be satisfied by the
3 18 school corporation by issuance on an internet site maintained
3 19 by the school corporation or by a statewide association that
3 20 represents the school corporation. Notice may be published in
3 21 a relevant contractor publication with statewide circulation
3 22 in addition to, but not in lieu of, issuance on an internet
3 23 site. The request for proposals shall specify the energy
3 24 conservation measures which the school corporation seeks to
3 25 implement. The request for proposals shall include, at a
3 26 minimum, all of the following:

3 27 a. Name and address of the school corporation.
3 28 b. Name, address, title, and telephone number of a contact
3 29 person for the school corporation.

3 30 c. Notice indicating that the school corporation is
3 31 requesting qualified providers to propose energy conservation
3 32 measures to be provided pursuant to an energy efficiency
3 33 contract.

3 34 d. A request for documentation that the respondent is a
3 35 qualified provider.

4 1 e. Date, time, and place where proposals must be received.

4 2 f. Evaluation matrix for assessing the proposals.

4 3 g. A request for qualified provider documentation of
4 4 ability to provide training and follow-up instruction to
4 5 school corporation employees regarding routine and normal
4 6 maintenance of any equipment or systems installed or altered
4 7 by an energy audit and regarding the repair or installation of
4 8 new or existing equipment, for the duration of the energy
4 9 efficiency contract.

4 10 h. The total project cost, and energy and operational cost
4 11 savings for the energy conservation measures to be
4 12 implemented.

4 13 i. Any other stipulations and clarifications the school
4 14 corporation may require.

4 15 Sec. 4. NEW SECTION. 293.4 AWARD OF ENERGY EFFICIENCY
4 16 CONTRACT.

4 17 1. A school corporation shall select the lowest
4 18 responsible bidder who is a qualified provider that best meets
4 19 the needs of the school corporation based on a life cycle cost
4 20 analysis as defined in section 470.1. A school corporation
4 21 may enter into an energy efficiency contract with a qualified
4 22 provider if it finds, after evaluating the proposal pursuant
4 23 to section 293.3, that the total amount the school corporation
4 24 would spend on the energy conservation measures would not

4 25 exceed the amount of energy or operational cost savings, or
4 26 both, within a twenty-year period. Before entering into an
4 27 energy efficiency contract, the qualified provider shall
4 28 provide the following:

4 29 a. Costs for engineering for all energy conservation
4 30 measures by project type, financing costs, costs and options
4 31 for verification and monitoring of guaranteed energy cost
4 32 savings, the amounts by which energy or operating costs will
4 33 be reduced, the cost of providing the written guarantee, and
4 34 any additional costs that may be incurred by the school
4 35 corporation.

5 1 b. Energy cost savings in a form which shall be auditable,
5 2 clearly disclosed, calculated using the appropriate
5 3 international performance measurement and verification
5 4 protocol, and supported by extended calculations for each
5 5 energy conservation measure for a proposal that includes a
5 6 written guarantee of energy cost savings. The following
5 7 energy or operational cost savings shall be calculated:

5 8 (1) Projected reduction in energy costs, including
5 9 underlying assumptions related to energy costs over time and
5 10 reduced energy consumption attributable to equipment,
5 11 engineering, operator training, and any degree-day adjustments
5 12 from baseline use.

5 13 (2) Projected reduction of operating and maintenance
5 14 costs, exclusive of energy cost savings, and the basis and
5 15 underlying assumptions of the cost of labor and financing used
5 16 in the calculation.

5 17 c. Financing terms if financing is part of the proposal.

5 18 d. Evidence that the qualified provider either employs, or
5 19 is associated with as a partner, member, officer, coventurer,
5 20 or subcontractor, a person duly licensed or registered in this
5 21 state to provide the services required to complete the project
5 22 and conduct business in this state. A qualified provider may
5 23 provide project services that the qualified provider is not
5 24 licensed or registered to perform if the services are provided
5 25 by a subcontractor of the qualified provider who is licensed
5 26 or registered in this state.

5 27 2. A school corporation may enter into a financing
5 28 agreement as provided in sections 473.19, 473.20, and 473.20A,
5 29 for the purchase and installation of energy conservation
5 30 measures, or may secure financing through a third party for
5 31 the purchase and installation of energy conservation measures.
5 32 Notwithstanding any provision of law to the contrary, energy
5 33 efficiency contracts may extend beyond the fiscal year in
5 34 which they become effective, and may be automatically renewed
5 35 annually for up to twenty years.

6 1 3. A qualified provider shall be responsible for the
6 2 measurement and verification of the energy cost savings
6 3 generated by the energy conservation measures. A school
6 4 corporation may have these energy cost savings verified by any
6 5 individuals, including licensed engineers or registered
6 6 architects, who are qualified through the certified
6 7 measurement and verification professional program on an annual
6 8 basis. The actual energy cost savings documentation shall use
6 9 the international performance measurement and verification
6 10 protocol. The verification shall also include an annual
6 11 reconciliation of the guaranteed energy cost savings for the
6 12 life of any financing agreement obligations or until the
6 13 project is verified to be repaid. The cost of this
6 14 verification shall be a part of an ongoing energy efficiency
6 15 contract with the qualified provider, and may be paid
6 16 utilizing revenue derived from levies or taxes imposed under
6 17 section 298.2, sections 298.18 through 298.22, or chapter
6 18 423E. School corporations created under chapter 260C or 273
6 19 may use any allowable funds available to implement this
6 20 subsection.

6 21 4. The selected qualified provider shall provide a one
6 22 hundred percent performance guarantee bond to the school
6 23 corporation for the installation of the energy conservation
6 24 measures as outlined in the energy efficiency contract.

6 25 5. A school corporation has the right to terminate an
6 26 energy efficiency contract at any time provided that written
6 27 notice to the qualified provider is provided at least sixty
6 28 days prior to termination. A qualified provider shall include
6 29 clear statements and requirements regarding contract
6 30 termination as part of the contract documentation. The
6 31 documentation shall clearly state the options of the school
6 32 corporation to satisfy contract obligations early and include
6 33 all associated costs. The documentation shall also state the
6 34 rights of a school corporation under an energy efficiency
6 35 contract for terminating the contract due to nonperformance,

7 1 and for listing all costs and responsibilities for payment of
7 2 any remaining debt associated with energy or operational cost
7 3 savings already implemented.

7 4 6. An energy efficiency contract shall include a written
7 5 guarantee by a qualified provider regarding the amount of any
7 6 actual energy cost savings. A qualified provider shall
7 7 reimburse a school corporation for any shortfall of guaranteed
7 8 energy cost savings projected in the energy efficiency
7 9 contract. Actual energy cost savings documentation shall be
7 10 reconciled on an annual basis as provided in the energy
7 11 efficiency contract. Savings shortfalls shall be made whole
7 12 by the qualified provider within sixty days. Excess savings
7 13 may be carried forward to future years of the energy
7 14 efficiency contract documented and mutually determined. A
7 15 qualified provider shall guarantee the savings for the length
7 16 of the energy efficiency contract. An energy efficiency
7 17 contract may provide for payments over a period of time, not
7 18 to exceed twenty years.

7 19 7. If an energy efficiency contract entered into by a
7 20 school corporation results in the layoff of union bargaining
7 21 unit members, the school corporation shall notify the union
7 22 within sixty days of an energy conservation measure
7 23 implementation which would affect bargaining unit positions.
7 24 If, as a result of a layoff procedure where positions are
7 25 eliminated or hours of work are reduced, benefits are affected
7 26 or other subjects covered in a collective bargaining agreement
7 27 are impacted, the school corporation shall offer the affected
7 28 employees other employment within the school corporation.
7 29 Other employment shall first be sought within the affected
7 30 employee's department and county of employment. Affected
7 31 employees shall not be subject to loss of pay or employment
7 32 based on actions taken pursuant to an energy efficiency
7 33 contract.

7 34 8. If it is determined that there is a shortfall of
7 35 guaranteed energy cost savings as originally projected in the
8 1 contract attributable to the actions of a school corporation
8 2 as opposed to the actions of a qualified provider, the school
8 3 corporation may utilize the revenue derived from the regular
8 4 portion of the levy established in section 298.2, subsection
8 5 1, or from any other permissible source, to cover the
8 6 shortfall in relation to the school corporation's assigned
8 7 portion of the expected energy cost savings as outlined in the
8 8 energy efficiency contract. A school corporation utilizing
8 9 this subsection shall, during the district budget process,
8 10 certify to the department of management the amount of the
8 11 shortfall. The department of management shall, as necessary,
8 12 exceed rate or budget limitations only for the upcoming budget
8 13 year and only in the amount of the shortfall between the
8 14 actual and guaranteed amount due to the actions of the school
8 15 corporation. School corporations shall have the authority to
8 16 transfer the revenue to the account or fund where the
8 17 shortfall exists. School corporations created under chapter
8 18 260C or 273 may use any allowable funds available to implement
8 19 this subsection.

8 20 Sec. 5. Section 297.7, subsection 1, Code 2007, is amended
8 21 to read as follows:

8 22 1. Chapter 26 is applicable to the construction and repair
8 23 of school buildings and other public improvements as defined
8 24 in section 26.2, subject to the provisions of section 297A.1
8 25 and chapter 293.

8 26 Sec. 6. NEW SECTION. 297A.1 INTEGRATED PROJECT DELIVERY
8 27 CONTRACT.

8 28 1. Notwithstanding section 26.3, subsection 2, or any
8 29 other provision of law to the contrary, a school corporation
8 30 under chapter 260C, 273, or 279 may enter into an integrated
8 31 project delivery contract for the implementation of energy
8 32 conservation measures or projects for construction or
8 33 renovation of a facility. For purposes of this subsection,
8 34 "integrated project delivery contract" means a single contract
8 35 integrating design, construction, or renovation services which
9 1 may include maintenance, operations, preconstruction, and
9 2 other related services. An integrated project delivery
9 3 contract may provide that the design, construction, or
9 4 renovation phases of a project proceed sequentially, or on a
9 5 concurrent basis. A new facility constructed by a school
9 6 corporation pursuant to an integrated project delivery
9 7 contract shall achieve, at a minimum, the green building
9 8 council's leadership in energy and environmental design silver
9 9 rating standard.

9 10 2. Prior to entering into an integrated project delivery
9 11 contract, a school corporation shall issue a request for

9 12 proposals. A request for proposals shall be advertised for
9 13 public bidding and let publicly pursuant to section 26.3,
9 14 subsection 1, with the exception that notice provisions may be
9 15 satisfied by the school corporation by issuance on an internet
9 16 site maintained by the school corporation or by a statewide
9 17 association that represents the school corporation. Notice
9 18 may be published in a relevant contractor publication with
9 19 statewide circulation in addition to, but not in lieu of,
9 20 issuance on an internet site. The request for proposals shall
9 21 specify the following:

9 22 a. The scope of work, including performance and technical
9 23 requirements, conceptual design, specifications, and
9 24 functional and operational elements for the delivery of the
9 25 completed project.

9 26 b. A description of the qualifications required of the
9 27 integrated project contractor and the selection criteria,
9 28 including the weight or relative order, or both, of each
9 29 criterion.

9 30 c. The maximum time allowable for design and construction.

9 31 d. A requirement that a proposal be segmented into two
9 32 parts, a technical proposal and a price proposal.

9 33 e. A requirement that the price proposal contain all
9 34 design, construction, engineering, inspection, and
9 35 construction costs of the proposed project.

10 1 f. The date, time, and location of the public opening of
10 2 the sealed price proposals.

10 3 g. Any other information relevant to the proposed project.

10 4 3. A school corporation shall select the lowest
10 5 responsible bidder whose proposal best meets the needs of the
10 6 school corporation based on a life cycle cost analysis as
10 7 defined in section 470.1. Before entering into a contract,
10 8 the selected integrated project delivery contractor shall
10 9 provide the following:

10 10 a. Evidence that the contractor either employs, or is
10 11 associated with as a partner, member, officer, coventurer, or
10 12 subcontractor, a person duly licensed or registered in this
10 13 state to provide the services required to complete the project
10 14 and conduct business in this state. A contractor may provide
10 15 project services that the contractor is not licensed or
10 16 registered to perform if the services are provided by a
10 17 subcontractor who is licensed or registered in this state.

10 18 b. A breakdown of all project costs pursuant to the
10 19 requirements of chapter 26.

10 20 Sec. 7. Section 298.3, subsection 7, Code 2007, is amended
10 21 to read as follows:

10 22 7. Expenditures for energy conservation, including
10 23 expenditures authorized pursuant to chapters 293 and 473.

10 24 Sec. 8. Section 473.20, subsection 2, unnumbered paragraph
10 25 2, Code 2007, is amended to read as follows:

10 26 School districts and community colleges may enter into
10 27 financing arrangements with the department or its duly
10 28 authorized agents or representatives obligating the school
10 29 district or community college to make payments on the loans
10 30 beyond the current budget year of the school district or
10 31 community college, but in no event longer than the expected
10 32 useful life of the energy conservation measure. Chapter 75

10 33 shall not be applicable. School districts shall repay the
10 34 loans from moneys in ~~either~~ their general fund or ~~debt service~~
10 35 ~~fund utilizing revenue derived from levies or taxes imposed~~

11 1 under section 298.2, sections 298.18 through 298.22, or
11 2 chapter 423E. Community colleges shall repay the loans from

11 3 their general fund. Other entities receiving loans under this
11 4 section shall repay the loans from any moneys available to
11 5 them.

11 6 Sec. 9. EFFECTIVE DATE. This Act, being deemed of
11 7 immediate importance, takes effect upon enactment.

11 8 EXPLANATION

11 9 This bill relates to school building energy efficiency
11 10 measures, renovations, and construction.

11 11 The bill allows school corporations, involving school
11 12 districts, community colleges, and area education agencies,
11 13 through a request for proposals process, to enter into energy
11 14 efficiency contracts with qualified providers for purposes of
11 15 undertaking one or more energy conservation measures, as
11 16 defined in the bill. The bill defines an energy efficiency
11 17 contract to refer to an integrated project delivery contract,
11 18 as defined subsequently in the bill, recommending and
11 19 implementing one or more energy conservation measures
11 20 including verification of energy cost savings and a guarantee
11 21 of such savings by a qualified provider.

11 22 The bill provides that a school corporation may enter into

11 23 an energy efficiency contract with a qualified provider if it
11 24 finds, after evaluating the proposal, that the total amount it
11 25 would spend on implementing the energy conservation measures
11 26 would not exceed the amount of energy or operational cost
11 27 savings, or both, within a 20-year period. Prior to entering
11 28 into a contract, the bill specifies that a qualified provider
11 29 shall disclose costs in several categories and projected
11 30 energy, operational, and maintenance cost savings, financing
11 31 terms if included in the proposal, and evidence of licensure
11 32 or registration to perform the project possessed by the
11 33 qualified provider or an associate or subcontractor of the
11 34 provider.

11 35 The bill provides that a qualified provider shall be
12 1 responsible for the measurement and verification of the energy
12 2 cost savings generated by the energy conservation measures,
12 3 and that the school corporation may have these savings
12 4 annually verified by a qualified individual, including a
12 5 licensed engineer or registered architect. The bill provides
12 6 that the school corporation has the right to terminate an
12 7 energy efficiency contract at any time provided that written
12 8 notice to the qualified provider is given at least 60 days
12 9 prior to termination. The qualified provider is required to
12 10 provide a 100-percent performance guarantee bond to the school
12 11 corporation for the installation of the energy conservation
12 12 measures as outlined in the energy efficiency contract.

12 13 The bill provides that an energy efficiency contract shall
12 14 include a written guarantee by the qualified provider of the
12 15 amount of any actual energy cost savings, and that the
12 16 qualified provider shall reimburse the school corporation for
12 17 any shortfall projected in the contract. The savings are
12 18 required to be guaranteed for the duration of the contract.

12 19 The bill provides that if an energy efficiency contract
12 20 initiated by a school corporation results in the layoff of
12 21 union bargaining unit members, the school corporation shall
12 22 notify the union within 60 days of an implementation which
12 23 would affect bargaining unit positions. The bill contains
12 24 provisions regarding efforts to maintain employment in the
12 25 event of a layoff, and states that employees shall not be
12 26 subject to loss of pay or employment as a result of entering
12 27 into an energy efficiency contract.

12 28 The bill provides that in the event of a shortfall of
12 29 guaranteed energy cost savings attributable to the actions of
12 30 a school corporation, the school corporation may utilize
12 31 revenue derived from the regular physical plant and equipment
12 32 levy, or from any other permissible source, to cover the
12 33 shortfall in relation to the school corporation's assigned
12 34 portion of the expected energy cost savings pursuant to
12 35 specified procedures.

13 1 The bill additionally provides for the establishment of
13 2 integrated project delivery contracts by school corporations,
13 3 which would include but not be limited to energy efficiency
13 4 contracts previously described. The bill defines an
13 5 integrated project delivery contract to refer to a single
13 6 contract integrating design, construction, or renovation
13 7 services, which may include maintenance, operations,
13 8 preconstruction, and other related services. The bill
13 9 provides that notwithstanding Code section 26.3, subsection 2,
13 10 which requires a school corporation to have a licensed
13 11 engineer, licensed landscape architect, or registered
13 12 architect prepare public improvement plans and specifications
13 13 and calculate the estimated total cost of a proposed public
13 14 improvement prior to obtaining project bids, a school
13 15 corporation can initiate a request for proposals process to
13 16 enter into an integrated project delivery contract for the
13 17 implementation of energy conservation measures or projects for
13 18 construction or renovation of a facility. The bill specifies
13 19 that a new facility constructed by a school corporation
13 20 pursuant to an integrated project delivery contract shall
13 21 achieve, at a minimum, the green building council's leadership
13 22 in energy and environmental design silver rating standard, and
13 23 specifies several requirements relating to the content of the
13 24 request for proposals. The bill provides that before entering
13 25 into a contract with the lowest responsible bidder whose
13 26 proposal best meets the needs of the school corporation, a
13 27 selected contractor shall provide evidence of professional
13 28 qualification or affiliation to perform the project, and a
13 29 breakdown of all project costs pursuant to the requirements of
13 30 Code chapter 26.

13 31 The bill makes a conforming change to Code section 297.7
13 32 regarding the applicability of Code chapter 26 regarding
13 33 public construction bidding to energy efficiency contracts and

13 34 integrated project delivery contracts, and authorizes
13 35 utilization of the board-approved physical plant and equipment
14 1 levy, or revenue from any other permissible source, for
14 2 purposes of guaranteeing financing arrangements entered into
14 3 by the school district pursuant to the contracts. The bill
14 4 specifies that area education agencies and community colleges
14 5 making similar guarantees may utilize any allowable funds for
14 6 such purposes.
14 7 The bill further provides, with reference to amounts
14 8 obtained by school districts and community colleges pursuant
14 9 to the energy loan fund administered by the department of
14 10 natural resources, that financing arrangements currently
14 11 authorized to extend beyond a budget year shall not expend
14 12 beyond the expected useful life of an energy conservation
14 13 measure. Additionally, a school district is authorized to
14 14 repay the loans from either their general fund, or using
14 15 revenue derived from specified tax levies and bonds.
14 16 The bill takes effect upon enactment.
14 17 LSB 6380XS 82
14 18 rn/rj/5